IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 272 of 2001 (M/B)
(Old No. 21578 of 1987)

Dated of decisions: 12th April, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Dated 12.04.2006 Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 272 of 2001 (M/B)
(Old No. 21578 of 1987)

Shankar Lal Sah S/o Lar Har Lal Sah,
R/o Village and Post Ranibagh,
Tehsil and District Nainital. …….. Petitioner

Versus

1. District Land Acquisition Officer, Nainital
2. State of Uttaranchal through Collector, Nainital.

…….. Respondents

Mr. Pankaj Purohit, Advocate for the petitioner.
Mr. Subhash Upadhyaya, Standing Counsel for the State of Uttaranchal

JUDGMENT

Coram: Hon. Rajeev Gupta, C.J.
Hon. P.C. Pant, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. Pankaj Purohit, Advocate for the petitioner.

Mr. Subhash Upadhyaya, Standing Counsel for the State of Uttaranchal

They are heard.

2. Original petitioner Shankar Lal Sah filed this writ petition in the year 1987 in the High Court of Judicature at Allahabad for the following reliefs:

"i) a writ order or direction in the nature of certiorari quashing the award dated 31.3.86 passed by respondent No. 1.

ii) a writ order or direction in the nature of mandamus directing respondents to refer the case for determination of compensation u/s 18 of the Act;

iii) a writ order or direction in the nature of certiorari quashing the notification issued under Section 4 and 6 of the Land Acquisition Act;

iv) any other writ order or direction to which the petitioner may be found entitled to;

v) award the cost of the petitioner to the petitioner."

3. During the pendency of the writ petition, Shankar Lal Sah died and his legal representatives Madn Lal Sah; Mahesh Lal Sah and Mukul Sah were allowed to be substituted vide order dated 08.07.1991.

4. The petitioner's application filed under Section 18 of the Land Acquisitions Act was dismissed by Special Land Acquisition Officer Nainital vide order dated 27.04.1987 (Annexure 5), as the same was filed beyond the prescribed period of six weeks from the service of the notice under Section 12(2) of the Act.

5. Mr. Pankaj Purohit, the learned counsel for the petitioner vehemently argued that the Special Land Acquisition Officer erred in dismissing the petitioner's application filed under Section 18 of the Act without considering the grounds taken by the petitioner for condonation of delay in filing the application under Section 18 of the Act.

6. Mr. Subhash Upadhyaya, the learned Standing Counsel for the respondents, on the order hand, supported the impugned order and contended that as the Special Land Acquisition Officer had no power to condone the delay in filing the application under Section 18 of the Act.

7. The award in the case was passed on 31.03.1986 and the notice under Section 12(2) was served on Shankar Lal Sah on 19.04.1986. The application under Section 18 was filed 07.08.1986. Thus, admittedly, the application filed by Shankar Lal Sah under Section 18 of the act was filed beyond six weeks of the service of the notice on him under section 12(2) of the Act.

8. The Apex Court in the case of **Mahadeo Bajirao Patil Vs. State of Maharashtra and others** reported in **(2005) 7 SCC 440,**

while considering the power of the Land Acquisition Officer to condone the delay in filing the application under Section 18 of the Act, observed in para 14 as follows:

> "14. …….Since, the application under Section 18 was not filed within six weeks of the receipt of notice under Section 12(2) of the Act, the High Court did not commit any error in holding that the application was barred by limitation. It was not disputed before us that the Land Acquisition Officer making a reference, or the Court considering a reference under Section 18 of the Act has no power of condonation of delay in making an application under the aforesaid section."

9. In the present case also, the application under Section 18 was filed beyond the prescribed period of six weeks from the service of the notice under Section 12(2) of the Act. True, an application under Section 5 of the Limitation Act was filed for condonation of the delay in filing the application under Section 18 mainly on the ground that Shankar Lal Sah at the relevant time was an old person aged about 84 years and as such, he could not filed the application under Section 18 within the prescribed period of six weeks.

10. Be that as it may the fact remain that the Special Land Acquisition Officer had no power to condone the delay in filing the application under Section 18 of the Act as has been by the Apex Court in the above quoted dictum in the case of Mahadeo Bajirao Ptil Vs. State of Maharashtra and others (supra).

11. Therefore, we do not find any infirmity in the impugned order (Annexure 5) whereby the application filed by original petitioner Shankar Lal Sah under Section 18 of the Act was dismissed as time barred.

12. The writ petition, therefore, fails and is, hereby, dismissed.

(P.C.Pant, J.) **(Rajeev Gupta, C.J.)**
12.04.2006 **12.04.2006**

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